



## The impact of disciplinary sanctions on scientific promotions – A comparative analytical study

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**Abstract-** The faculty member is graded in the career ladder according to the Law of Scientific Promotion No. 167 of 2017, However, it may be subject to disciplinary sanctions that may affect these scientific promotions in our research, we have shown whether disciplinary sanctions have the effect of delaying or not scientific promotions, relying on a comparative analytical approach to law.

**Keywords:** Law of Scientific Promotion, scientific promotions, disciplinary sanctions

### I. INTRODUCTION

One of the basic duties of a faculty member is intellectual and scientific development in the educational institution and this can only be done by providing libraries and educational sites with more scientific products that contribute to the creation of a development movement in universities and state institutions. These scientific products are one of the most important requirements for scientific promotions that the faculty member grades in the career ladder, but sometimes the faculty member was subjected to some disciplinary punishments which may affect on the scientific promotions and the system of scientific promotions for Baghdad University for the year 1997, but after searching and analyzing the texts of the law it was found that there was no such effect after we clarified the concept of violations, disciplinary punishments, and the provisions of scientific promotions. We have adopted in our research on the analytical comparative approach method to the texts of the law also, the reason for choosing this topic is the lack of legal studies that deal with the impact of sanctions on scientific promotions, and drew the attention of universities to the lack of diligence while the legal text did not mention it without justification.

#### The first section

The concept of violations and disciplinary sanctions Disciplinary violations and sanctions are represented by the departure of the faculty member from the requirements and duties of the general function and this exposes him to accountability and sanctions accordingly, we will explain each of the violations and disciplinary sanctions separately.

#### The first demand

#### The concept of disciplinary violations

Numerous labels were received for the violations committed by the faculty member, but the most accurate designation is the disciplinary violation and in order to be aware of the subject, we will clarify in several points the definition of disciplinary violation, its elements, and images.

#### First: the definition of disciplinary violations

There is an aspect of jurisprudence that uses the term administrative guilt <sup>1</sup> Some called it a disciplinary crime <sup>2</sup> and others chose the term career error <sup>3</sup>. As for my choice to name (disciplinary violation) it

<sup>1</sup>Hanan Muhammad Mutlak, Judicial Control over the Relevance between Violation and sanction in Disciplinary Decisions, Master Thesis, College of Law - Baghdad University, 1994, p. 9.

happened because it is more harmonious with the word discipline which was called on the legislation control the employee's behavior while performing his job duties

Jurisprudence deals with the concept of disciplinary violation On the level of French jurisprudence, it was defined by the jurist (Francis Delbury) as (The act or abstention of an act that break the duties that the job imposes)<sup>4</sup> and (Catherine Robert) defines it as (the error related to the service)<sup>5</sup> As for the Egyptian jurisprudence, Dr. Abdel-Fattah Hassan defined it as (every behavior that is issued by the worker during the performance of the job or outside it and affects it in a way that may prevent the facility from carrying out its activities fully, whenever this act was committed against a sinful will).<sup>6</sup> and defined by Dr. Muhammed Othman Mukhtar That it is (every act or abstention in violation of a legal rule or as required by the worker during the performance of the job or outside it in a way that reflects on it without an acceptable excuse) <sup>7</sup> While in the judiciary, the French State Council considered the employee's violation of duties an error that requires accountability and the employee must take into account his actions and avoids breaching job dignity whether inside or outside the job <sup>8</sup> while the Egyptian judiciary, the Supreme Administrative Court ruled by saying (the reason for the disciplinary decision in general is that the employee violated the duties of his position positively or negatively or to perform an act forbidden to him so every employee violates the duties that stipulated in the general regulations or rules or superiors orders issued within the limits of the law or sidetrack from the requirements of duty in the work of his job or fails to perform it with the precaution, accuracy and honesty required, or breaches the legitimate trust In this job, he commits an administrative guilt justifying his discipline)<sup>9</sup>

## Second - Pillars of disciplinary violation

The jurists agreed that the violation is based on three pillars, namely the material pillar, the moral pillar and the legal pillar, and the jurists add a fourth pillar, which is the adjective pillar<sup>10</sup> and these pillars will be discussed consecutively :-

1\_ The material pillar: - It is the external appearance of the behavior, whether negative or positive, and it consists in performing attendance work in violation of the law, or abstaining from conducting a legally required duty while the mere thought of the violation, it is not considered a violation because it did not come into physical existence<sup>11</sup>

The material pillar has three elements, which are the verb, the result, and the causal relationship .The verb is defined as the behavior issued by the employee and it must be visible and related to the job, whether it is positive, such as assaulting one of the work bosses or colleagues, or negative, such as refraining from carrying out a legal order and he cannot be questioned about internal intentions and also he is not questioned about preparatory actions, as it does not enter into the formation of the material pillar unless it is considered an independent crime <sup>12</sup>

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<sup>2</sup>Dr. Abdel-Qader Al-Sheikhly, *Disciplinary Law and its Relationship with Administrative and Criminal Laws - A Comparative Study* – 1<sup>st</sup> Edition, Dar Al-Furqan, Amman, 1983, p. 11, as well as Ali Khalil Ibrahim, *Employee Crime Subject to Discipline in Iraqi Law - A Comparative Study*, Dar Wasit Studies, Publishing and Distribution, London, 1985, p. 13.

<sup>3</sup>Yahya Qasim Ali, *Job Guarantees and Disciplinary sanction in Yemeni Law - A Comparative Study - Master Thesis*, College of Law – Babylon University, 1998. p. 20

<sup>4</sup>Salon (Serge) : *Delinquance et Repression disciplinaire dans la Fonclion publique* · these · paris · 1969 · p.47.

<sup>5</sup>Catherine ( Robert) : *le Fonclionnaire Francais* · paris · 1973 · p. 138

<sup>6</sup>Look: - Dr. Abdel-Fattah Hassan, *Discipline in the Public Service*, Darof Al Arab Nahda, Cairo, 1964, p. 7

<sup>7</sup>Look: Dr. Muhammad Mukhtar Othman, *The Disciplinary Crime Between Administrative Law and the Science of Public Administration*, First Edition, Dar Al-Fikr Al-Arabi, 1973, p. 73.

<sup>8</sup>Look: - Ammar Khalil Jumma Al-Hadithi, *The Disciplinary System of Faculty Members*, Master Thesis, Anbar University, p. 31.

<sup>9</sup>Look: The ruling of the Supreme Administrative Court of Appeal No. (1723) for the year 2 , the third year group, session of 25/1/1958 indicated by this Dr. Novan Al-Aqil Al-Ajarmeh, *Disciplinary Authority for Public Employee (Comparative Study)*, 1<sup>st</sup> edition, Dar Al-Thaqafa for Publishing and Distribution, 2009, p. 53, and also look: Dr. Muhammad Asfour, *The Punishment Authority that Does Not Belong to Discipline in the Field of Public Employment*, *Journal of Administrative Sciences*, Fifth Year, Second Issue, December (December) 1963, p. 41.

<sup>10</sup>Dr. Abdel-Fattah Hassan, *Principles of Kuwaiti Administrative Law*, Darof Al Arab Nahda, Beirut, 1969, p. 320.

<sup>11</sup>Dr. Majed Ragheb Al-Helou, *Administrative Law*, Dar Al-University Press , Alexandria, 1999, p. 342, as well as Khaled Muhammad Al-Mawla, *the authority competent to impose disciplinary penalties on the public employee in Iraq*, PhD thesis, College of Law -Mosul University , 2001, p. 555.

<sup>12</sup>Dr. Mazen Lilo Rathii, *Administrative Law*, 3<sup>rd</sup> Edition is more revised , Duhok University Press, 2010, p. 115

While the result is defined as the change that happens in the external world as a result of the employee's action, and some jurists do not require the result, since the mere fact of violating the law, even if no moral or material damages occur, constitutes a disciplinary violation<sup>13</sup>. While the causal relationship, it is the link between the violating act and the harmful result, so that if it had not been committed, the result would not have occurred<sup>14</sup>.

2-Moral pillar: - It means the direction of the employee's will to commit the wrongful act, so if his intention of the act tends to achieve the result, this is called his mistake by deliberate error, and if he intends his intention to act without the result, he is called non-intentional error<sup>15</sup>.

3-The legal pillar: - It is represented by the presence of the legal text that considers the act or omission a crime punishable by law<sup>16</sup>.

4- Adjective Corner :- It is represented in the perpetrator of the act in violation of the law or omission is a public official (faculty member) and the description specified by the law<sup>17</sup>.

### **Third: - Disciplinary violations**

The faculty member is committed to many of the negative and positive duties specified by the law in separate laws, whether they are in the University Service Law No. (23) for the year 2008, or in the Law of Discipline of State and Public Sector Employees No. (14) for the year 1991 amending 1969, or in the Labor Law No. (37) for the year 2015 regarding members of the faculty member in private universities<sup>18</sup>. In France, the French Higher Education Law No. (68-879) of June 12, 1968 in Articles (34, 36 and 37) the duties that faculty members must observe<sup>19</sup>. Article 34 of this law states the full independence of the faculty member, the enjoyment of complete freedom while practicing their research and educational work, and observance of university traditions and the provisions of law and objectivity at work<sup>20</sup>. and Article (36) states that the prohibition of any form of advertising or promotion within scientific institutions and universities, and emphasis on avoiding influences Political or economic<sup>21</sup>. And article (37) also states that the responsibility of the directors of scientific institutions and research units (deans) to maintain order within these institutions in accordance with the law, regulations and internal regulations, and that any act or incitement to commit an act in violation of freedoms or public order makes its perpetrator subject to disciplinary accountability<sup>22</sup>.

While in Egypt, the Universities Organizing Law No. (49) of 1972 has organized many obligations that a faculty member must adhere to and observe, including devoting to doing scientific lessons and lectures, contributing to the advancement of science, arts and literature, and conducting innovative research, supervising what students prepare, supervising laboratories and libraries, and providing them with references<sup>23</sup>. Adhere to the inherent university traditions and values, transmit it in the hearts of students, establish direct contact with students and pasture their social, cultural and sports affairs<sup>24</sup>. Maintaining the system within the classrooms, lectures, researches and laboratories, and submitting a report to the dean of the college or institute on every accident that would disturb the system and the measures taken to preserve it<sup>25</sup>. The university professor must submit an annual report on his scientific activities and research that he published and conducted and the research that is being done to the head of the

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<sup>13</sup>Dr. Shaima Abdul Ghani Muhammad Ata Allah, The extent of the work of the rules of criminal responsibility in the field of disciplinary responsibility, Dar of Al Arab Nahda, 2002, p. 64

<sup>14</sup>Dr. Ali Bedair, Dr. Issam Al-Barzanji, Dr. Mahdi Al-Salami. Principles and provisions of the Administrative Law, Dar Al-Kutub for Printing and Publishing, Baghdad, 1<sup>st</sup> Edition, 1993, 138.

<sup>15</sup>Dr. Ali Abdel-Qader Mustafa, General position in the Islamic system and modern systems, Cairo, 1982, p. 324.

<sup>16</sup>Dr..Abdul Qadir Muhammad Al-Qaisi, The Impact of the Employee's Criminal Act on Terminating his Employment Relationship, Dar Al-Senhouri Lebanon - Beirut, 1<sup>st</sup> Edition, 2016, p.

<sup>17</sup>For more details, Chancellor Adly Khalil looks at crime, 1<sup>st</sup> edition, Egypt, 1988, p. 5, as well as Iman Haif Muhammed, The Disciplinary System of Professors of Private Universities in Iraq, Nippur press for Printing, Publishing and Distribution, Diwaniya, 1<sup>st</sup> Edition, 2020, p. 138.

<sup>18</sup>For more details see: Iman Haif Muhammed, the same source, pp. 142-167.

<sup>19</sup>Look: - Dr. Sabry Mohammed El-Senousy Mohammed, the disciplinary system of members of the faculty member of the university - a comparative study -, Dar of Al Arab Nahda, 3<sup>rd</sup> edition, Cairo, 2013, p. 53.

<sup>20</sup>Look:- Article (34) of the French Higher Education Law No. (68-879) issued on 12 June 1968

<sup>21</sup>Look: Article (36) of the French Higher Education Law No. (68-879) issued on June 12, 1968.

<sup>22</sup>Look: Article (37) of the French Higher Education Law No. (68-879) issued on June 12, 1968.

<sup>23</sup>Look: Article (95) of the Egyptian Universities Regulatory Law No. (49) of 1972.

<sup>24</sup>Look: Article (96) of the Egyptian Universities Regulatory Law No. (49) for the year

<sup>25</sup>Look: Article (97) of the Egyptian Universities Regulatory Law No. (49) of 1972

department concerned in order to present it to the department and the latter must submit a report to the dean explaining the progress of work and scientific activity in the department and the goals that the department has achieved<sup>26</sup>, and Professors must participate in the work of the committees and councils to which they are members, and they must participate in the scientific conferences of the department, college or institute<sup>27</sup>.

And in Iraq, the University Service Law No. (23) for the year 2008 mentioned several duties that a faculty member is obligated to do, including conducting scientific research in various fields: This duty is one of the important duties emphasized by the Iraqi legislator in many laws of higher education and scientific research<sup>28</sup>, contributing to university activities such as cultural seasons, university day, college exhibitions, graduation parties, student activities, and what it is required to do, from scientific and educational activities, contribute to authorship, translation and publishing, contribute to permanent and temporary councils and committees inside and outside the ministry, contribute to the development of scientific departments intellectually, educationally and scientifically, and present studies, research, reports, plans and curricula, conducting exams and monitoring their smooth running contributing to seminars, conferences and seminars inside and outside Iraq, performing the administrative duties assigned to it by the Ministry or the educational institution in which he works in, observing students intellectually and educationally, presenting reports on the educational curriculum<sup>29</sup>.

## **The second demand**

### **Concept of disciplinary sanctions**

Disciplinary sanctions is an important means by which the administrative authority can impose its control and ensure the continued functioning of the public facility as the faculty members have an important impact on their career status if they commit an act that rises to the level of disciplinary violation, therefore, we will clarify in this demand the definition of disciplinary sanctions, the authority competent to impose it, and the types of disciplinary sanctions.

#### **First: - definition of disciplinary sanctions**

The legislation did not define a separate definition for disciplinary sanctions, but rather carried out an inventory of the punishments list exclusively while legal jurisprudence defined disciplinary sanctions with several definitions we mention in French jurisprudence defined by jurist Hauriou as (An arbitrary procedure used by the administration to confront some of the punished act either by a means of strictly control by decisions or procedure taken by the highest presidential authority or by a judicial means, through the rulers of a disciplinary court)<sup>30</sup> while the dean (Bonard), he defined it as a special way to ensure respect for the legal rule, thus confirming its beneficial role in society<sup>31</sup>. While a part of the Egyptian jurisprudence, including Dr. (Suleiman Al-Tamawi) and Dr. (Muhammed Asfour), sees that the disciplinary sanctions is one of the means of reform and evaluation in the field of public employment, it is a guarantee and an instrument in the hands of the government that it uses to achieve the proper course of work and its regularity in public facilities<sup>32</sup> while a part of Iraqi jurisprudence sees that a disciplinary violation is (a penalty for a breach of job duties ... signed on the perpetrators of disciplinary crimes and it is defined exclusively..<sup>33</sup>

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<sup>26</sup>Look: Article (98) of the Egyptian Universities Regulatory Law No. (49) of 1972

<sup>27</sup>Look: Article (99) of the Egyptian Universities Regulatory Law No. (49) for the year

<sup>28</sup>The text is mentioned in Article (2 / First) of the Instructions of the Researcher Member Structure in the Centers of Scientific Research and Research Units in the Ministry of Higher Education and Scientific Research No. (148) for the year 2002 with the text (Conducting research and scientific studies assigned to the center or unit within its scientific and research plans in the form of Individual or within research teams according to the requirements of the work of the center or the unit), and accordingly, article (5) of the aforementioned instructions was required for the researcher in the center or unit to present no less than (3) researches, and no more than (4) researches per year according to the importance and complexity Scientific Research.

<sup>29</sup>Articles (2) and (16 / First) of the University Service Law No. (23) for the year 2008.

<sup>30</sup>Hauriou: *Precis de droit administrative et de droit Public*, 10 e.ed., sirey1921.p. 584

<sup>31</sup>Dr.. Mostafa Afifi, *The Philosophy and Disciplinary sanction*, Egyptian Book Authority, 1976, p. 27. See also Dr. Muhammed Asfour, *Discipline and sanction in Work Relations*, 1972, p. 63. See also, Dr. Suleiman al-Tamawi, *Disciplinary Judiciary*, previous source, p. 92

<sup>32</sup>Dr.. Muhammed Mukhtar Othman, *Disciplinary Crime between Administrative Law and the Science of Public Administration*, previous source, p. 31, and beyond

<sup>33</sup>Dr.. Mazen Lilo Radhi, *Administrative Judiciary*, Duhok University Publications, 2010, p. 116.

## Second - the authorities responsible for imposing disciplinary sanctions

It is the body authorized by the law to impose disciplinary sanctions In France, the Disciplinary Council is the one responsible for imposing disciplinary sanctions on faculty members , which emanates from the University Council.<sup>34</sup>

While the Egyptian law, the disciplinary authority shall be in two directions except for the president of the university and the disciplinary council, as the president of the university signs two sentences (blame and warning), whereas the disciplinary council will impose all sanctions<sup>35</sup>. While In Iraq, the University Service Law No. (23) for the year 2008 assigned the task of imposing penalties to the Law for Discipline of State and Public Sector Employees No. (14) for the year 1991 amended, which is represented by

A- (Head of the Department) means the employee to whom his department is attached to his ministry and who is in his rank who is both (the deputy minister and who is his degree of special grades who manage a certain formation and the general manager or any other employee authorized by the minister to impose the sanctions stipulated in Article ( 8) In this law)<sup>36</sup> the above law specified the authority of both the university president, the assistant president of the university, and the dean, the power to impose disciplinary sanctions each according to his powers, and he may sign (attention, warning, cut salary for a period not exceeding five days, reprimand) through a recommendation The investigative committee on university professors<sup>37</sup>.

B- The Concerned Minister: He may impose all the sanctions stipulated in Article (8) and Article (12 / First) permits the Minister to impose sanctions (attention- warning cutting off the salary) on the one who occupies the position of general manager and above, but if he commits an act more severe than these punishments , he must submit the matter to the Council of Ministers. But if (the university president or the assistant president of the university or the dean) finds that the act of the faculty member requires a more severe punishment, he must refer it to the Minister of Higher Education and Scientific Research, in order to obtain his approval to impose it according to jurisdiction<sup>38</sup>, and Article (14) of the law has been amended according to Article (7) ) From the First Amendment Law to Law No. (5) of 2008, canceling the text of Article (14) and replacing it with the following: (First: The President of the Republic or whoever is authorized to impose any of the sanctions stipulated in the Discipline Law on his employees. Second: The Prime Minister Or the minister or head of the department not affiliated with the Ministry of imposing one of the following punishments on the employee affiliated to his ministry or department covered by the provisions of the law of discipline: - Reducing salary - Reducing the degree - Separation - Isolation)

C- The authorized employee: The law permits delegating the competence to a person other than the one who has jurisdiction, which means (means that the person with the inherent jurisdiction entrusts to exercise part of his competencies to another employee) <sup>39</sup>, as Article (1 / second) of the State Disciplinary Law for State and Public Sector No. 14 of the year 1991 amending the phrase (or any other employee that authorizes the minister to impose the sanctions stipulated in Article (8) of this law).

### Third: - Disciplinary sanctions

There is agreement between all legislations on the existence of a list of sanctions for the perpetrator of a disciplinary violation, but there is a difference among them in the choice of those sanctions . In France,

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<sup>34</sup> Article (29) of Law 84-52 of 1984 amended by Law No. 90-578 of 4 June 1990 stipulates that the University Disciplinary Board is considered as a first-degree specialist in examining violations attributed to professors, teachers and employees within the university or scientific institution challenging its decisions before the Supreme Council For national education

<sup>35</sup> Look: Article (109) of the Egyptian Universities Regulatory Law No. (49) of 1972

<sup>36</sup> Look:- Article (1 / second) of the Law of Discipline above.

<sup>37</sup> Look: - Article (11 / second) of the State and Public Sector Discipline Law No. 14 of 1991 amending.

<sup>38</sup> Look: The decision of the General Assembly of the State Shura Council in its discriminatory capacity (previously), Resolution No. 44 / Discipline / Discrimination / 2008 dated 14/2/2008, Decisions and Fatwas of the State Shura Council for the year 2008, previous source, pp. 405-406.

<sup>39</sup> Look: Dr. Maher Saleh Allawi Al-Jubouri, Principles of Administrative Law (Comparative Study), Dar Al-Kutub Publishing and Printing, 1996, p. 171

professors, assistant professors and those similar in their ranks are subject to these sanctions (attention - temporary prevention from exercising job functions within The institution does not exceed two years - the distance from the institution (the university) - the prohibition from exercising higher education jobs or research in all public educational institutions of higher education for a specified or final period)<sup>40</sup>, and the French law also sets sanctions for members of education such as researchers and teaching assistants <sup>41</sup>

In Egypt, Article (110) of the Egyptian Universities Regulatory Law No. (49) of 1972 indicated the sanctions imposed on faculty members, namely (attention - blame - blame with delay of the premium due for one period or delay in appointment to the highest position or its equivalent for a period of time) two years at most - dismissal from the job while retaining the pension or the bonus within the limits of a quarter - Removal from the job while depriving the pension or the bonus within the limits of the quarter). While in the Iraqi law, the faculty members are punished with the sanctions stipulated in the Law of Discipline of State and Public Sector No. (14) for the year 1991 amended, namely (striking .., warning .., cutting the salary ..., reprimanding .., reducing the salary .., Reducing the degree., Separation .., isolation ..)<sup>42</sup>

## **The second section**

### **The provisions of scientific promotions**

he contribution to the scientific movement and intellectual, cultural and social development is one of the basic duties of the faculty member, and this is what motivates him to seek continuous scientific development through scientific research also the scientific institutions are obligated to promote the faculty member whenever he invents original research and distinguished activities and has had the primary effectiveness in developing the scientific institution in which he works and in order to complete the images, we must clarify the concept of scientific promotions, their requirements and their due date in separate requests.

### **The first demand**

#### **Concept of scientific promotions**

The administrative system in the state requires that institutions for the employee to go up the administrative ladder to the top of the ladder and this can only be achieved through scientific promotions and promotion, and in this requirement we will clarify the definition of scientific promotions and their requirements in separate points.

#### **First: Definition of scientific promotions**

Promotion in a language: means going up and upgrading. While in the terminology, there are different definitions some people have defined it as moving the employee from the position he occupies to a higher position in the job ladder, which results in an increase in duties and responsibilities, and may be accompanied by an increase in salary as well<sup>43</sup>. Others also defined it as assigning a new job to a worker with a higher job level in terms of responsibilities, duties and powers<sup>44</sup>. We can define it as assigning the highest position to the most qualified worker after confirming its suitability for development and taking administrative responsibilities.

While scientific promotions, they can only be achieved through what the researcher provides from the scientific products in the field of specialization during the periods specified by law<sup>45</sup>. The law defines faculty members who deserve to be promoted. In France, the French Higher Education

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<sup>40</sup>Look: Article (29/2) of Law No. 84-52 of January 26, 1984 of Law No. (90-578) of July 4, 1990

<sup>41</sup>These penalties are (blame, delaying promotion for a period of no more than two years, reducing the degree, prohibiting from promotion to a higher degree or position for a period not exceeding two years, prohibiting the exercise of all or some educational or research jobs in the authority in which he works or other educational institutions for a period not exceeding five Years with deprivation of all or half of the salary, referral to pension, dismissal from employment) This is considered in Article (29/1) of the January 26, 1984 amended Law.

<sup>42</sup>Look in the Article (8) of the State Employee and Public Sector Discipline Law No. (14) of 1991 amending.

<sup>43</sup>Look: Dr. Ghazi Faisal, The Guide to Employee Rights, 1<sup>st</sup> Edition, Book and Documentation House, Baghdad, 2006, p. 15.

<sup>44</sup>Ahmed Zaki Badawi, Dictionary of Social Sciences, Lebanon Office - Beirut, 1978, p. 333.

<sup>45</sup>Dr. Abdul Wahid Al-Shaibani, comprehensive scientific promotions university, 2003, p. 2

Law No. (68-879) of June 12, 1968 specified them (professors, teachers, assistant teachers)<sup>46</sup>. In Egypt, the Egyptian Universities Regulation Law No. (49) of 1972 specified them (professors, assistant professors, teachers)<sup>47</sup>. In Iraq, among them was the Law of the Ministry of Higher Education and Scientific Research No. (40) for the year 1988 amended as (professors, assistant professors, teachers, assistant teachers)<sup>48</sup>. The university service employee means (every employee who practices university teaching, scientific research, scientific and technical advice or work in the Office of the Ministry of Higher Education and Scientific Research or its institutions who meets the conditions of a faculty member stipulated in the Ministry of Higher Education and Scientific Research Law No. (40) for the year 1988 amended , Or any other law that replaces it)<sup>49</sup>.

While upgrading, this means transferring the employee from the position that he occupies to the position that is located in the higher class immediately following his rank within his job grade<sup>50</sup> and it only occurs under conditions which are the presence of vacancies in the highest degree to its degree to complete the legally specified period, if the employee fulfills the necessary legal conditions and qualifications and prove the efficiency of the employee to the degree to be raised to it upon the recommendation of the direct manager and his approval of the Supreme President therefore the promotion means an increase in the salary without changing the job or its level. While promotion, requires a change in the job level and the salary level<sup>51</sup>.

## **Second: - Requirements of scientific promotions**

The transition of a faculty member to a position in the administrative ladder is only in accordance with legal conditions specified by the instructions for scientific promotions in the Ministry of Higher Education and Scientific Research No. (167) for the year 2017, as follows: -

A\_The requirements of scientific promotions to the rank of teacher: - The one who is granted the rank of teacher must meet one of the following two conditions<sup>52</sup>:-

1-He must have a PhD or equivalent in a scientific degree, or he must have the highest scientific, technical, technical or professional certificate in the specializations in which a PhD or an equivalent certificate has not been granted scientifically, provided that the study period for obtaining this certificate is not less than three years after Undergraduate degree.

2- He must have held the rank of assistant teacher in the center of the ministry, or in one of the Iraqi universities or organizations, or the Iraqi Council for Medical Specializations for a period of no less than three years and that during this period he obtained points totaling (70) points, provided that they are not less than (46) points from Table No. (1) no less than (24) points from Table No. (2) (the tables are explained in the appendices) if two scientific research papers or (research and author) have been published during this period, one of them is single, evaluated at least by the majority of the evaluations should one of them is published in a discreet scientific journal except for publishing in magazines with influence factor (then it is permissible to publish two or more papers in the same journal with influence factor<sup>53</sup> ,but it can also be published in the same issue of this magazine.

B\_ Requirements of scientific promotions to the rank of Assistant Professor<sup>54</sup>: The condition for the promotion to the rank of Assistant Professor is the following conditions:

1- He has held the rank of teacher in the center of the ministry, in an Iraqi university or organization, or the Iraqi Council for Medical Specializations for a period of no less than four years.  
2- To have obtained during this period points totaling (80) points, provided that they are not less than (52) points from Table No. (1), and not less than (28) points from Table No. (2).  
3-he has published during this period no less than three scientific research or (two papers and an author) that is alone with one of them, at least valued by the majority of the assessments and published two

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<sup>46</sup>See the text of Article (30) of the French Higher Education Law No. 68-879 of 12 June 1968

<sup>47</sup>See the text of Article (64) of the Egyptian Universities Regulatory Law No. (49) of 1972

<sup>48</sup>See:Article (24) of the Ministry of Higher Education and Scientific Research Law No. (40) of 1988 amended

<sup>49</sup>See: Article (1 / third) of the University Service Law No. (23) for the year 2008.

<sup>50</sup>See: Article (6) of the State and Public Sector Payroll Law No. (22) of 2008

<sup>51</sup>Shaima Mudloul Abbas, Provisions for the Scientific Promotion, Journal of the College of Law, Al-Nahrain University, No. 18, 2016, p. 344.

<sup>52</sup>See the article (1 / First / Second) of the instructions for scientific promotions in the Ministry of Higher Education and Scientific Research No. (167) for the year 2017.

<sup>53</sup>"Impact coefficient" means "Thomson Reuters" or "sgr coefficient of influence" or "scopus".

<sup>54</sup>See the article (2 / First / Second) of the instructions for scientific promotions in the Ministry of Higher Education, Scientific Research No. (167) in 2017.

research papers in two refereed scientific journals from two different institutions with the exception of publishing in magazines with influence factor (then it is permissible to publish two research Or more in the same magazine with an impact factor, and can even be published in the same issue of this journal. 4- The promotion may be one year before the legal period which means three years (three years mean the minimum period) .Here the performance evaluations are required to be consecutive from the date of the last scientific upgrade obtained by the teacher until the application is submitted for the current upgrade, meaning there is no interruption in the performance evaluations for any reason. C- Requirements of scientific promotions to the rank of professor<sup>55</sup>: It is required for those who rise to the rank of professor to meet the following conditions:

- 1-He must have held the rank of assistant professor at the center of the ministry or in an Iraqi university or organization, or the Iraqi Council for Medical Specializations for a period of no less than six years.
- 2-He must have obtained during this period points totaling (90) points, provided that they are not less than (59) points from Table No. (1), and not less than (31) points from Table No. (2).
- 3-he has published during this period no less than three scientific research or (two papers and an author) that is alone with one of them, at least valuable by the majority of the assessments and published two researches in two refereed scientific journals from two different institutions with the exception of publishing in magazines with influence factor (then it is permissible to publish two research Or more in the same magazine with an impact factor, and can even be published in the same issue of this journal.
- 4- The promotion may be one year before the legal period which means five years (five years means the minimum period) and here the performance evaluations are required to be consecutive from the date of the last scientific upgrade obtained by the teacher until the application is submitted for the current upgrade and there is no interruption in the performance evaluations for any reason, Note that performance evaluation is no longer a prerequisite for scientific promotion transactions, according to the book issued by the Ministry of Higher Education and Scientific Research for the year 2019<sup>56</sup>.

### **Third - Requirements of scientific products presented in the promotion transaction**

One of the basic duties of a faculty member is authoring, publishing, conducting scientific research, providing studies and research, scientific and intellectual development<sup>57</sup>, so scientific research is the most prominent way to achieve these goals, scientific research is defined as (a detailed and accurate detailed presentation of a specific phenomenon, in order to reveal a fact or problem Existing and adding new information to it, and working to solve this problem in scientific ways and methods, through many research methods used in that)<sup>58</sup>.

The fact is that the term scientific (product) is broader than the term scientific research, as it includes research, books, doctoral theses, patents, etc., and accordingly we will clarify the scientific results that the applicant must provide, which are as follows<sup>59</sup>:

A-The scientific results submitted for promotion in Table (1) which is subject to the following evaluation:-  
1\_ To be in the general or specific area of specialization for the student to be promoted to the rank of teacher.

- 2\_ To be in the area of exact specialization for a student to be promoted to the rank of assistant professor, at least two of which are in the area of specific specialization, (one of them individually) gets a valuable evaluation and the rest can be in the area of general or exact specialization.
- 3-That they are all in the area of exact field of specialization for a student to be promoted to the rank of professor or at least three of them in the area of specific specialization, one of them individually and get an original evaluation and the rest can be in the field of general or precise specialization.
- 4-General specialization in the field of knowledge obtained by the student of the initial certificate (Bachelor or equivalent), and accurate specialization in the field of knowledge obtained by the promotion student obtained a certificate (master or doctorate or equivalent), which is the scientific field in which he was researched when writing a master's thesis or PhD thesis or the integrated, interconnected scientific track of the promotion student after obtaining the higher academic degree.
- 5-Should one of the scientific products for the rank of a teacher is published, and two of the scientific

<sup>55</sup>Look at the article 3 / First / Second / Third / Fourth of the instructions for scientific promotions in the Ministry of Higher Education see scientific research No. (167) for the year 2017.

<sup>56</sup>Look at the book, Ministry of Higher Education and Scientific Research / Research and Development Department No. BT4/9952, will be considered on 10/21/2019.

<sup>57</sup>Look at the article (2) of the University Service Law No. (23) of 2008

<sup>58</sup>Dr. Esmat Abdel-Majid Bakr, Fundamentals of Legal Research, Al-Sinhoury Library, 4<sup>th</sup> editionr, Beirut - Lebanon, p. 11.

<sup>59</sup>Look at the articles (24-36) of the instructions for scientific promotions in the Ministry of Higher Education and Scientific Research No. (167) of 2017 .



products are published for the ranks of professor and assistant professor, and the rest of the products can be acceptable for publication.

6\_ not provided in a previous scientific promotion.

7- Not derived from high diploma or master thesis or doctoral thesis for the promotion student or the two students participating with him and within the allowed proportions of plagiarism.

8- To be published or accepted for publication in accredited specialized scientific journals that fall within the competence of the promotion student, and in different scientific journals except for publication in impact factor magazines (then it is permitted to publish two or more papers in the same journal with an impact factor, but also can be published in the same number of this journal ).

9-These scientific products should be accomplished during the academic rank of the promotion.

10-The dates of publication or acceptance of publication must be before the date of application submission, except in the case of the presentation of promotional researches<sup>60</sup>, then the date of publication of such research or acceptance of publication may be after submitting the application.

11-All scientific products presented in the promotion transaction should be planned and approved by the scientific committees in the departments and all researchers must record their research approved for the purposes of scientific promotion, even if researchers participate in research with other colleges as the unregistered research does not fall within the scientific promotions and this is for the purpose of following up research, documenting and discussing them in scientifically sober, in a way that serves the community and shows the actual and applied need for such research.

12-The scientific output of the applicant for the promotion should be completed within the time period specified for each academic level exclusively, which is installed on the promotion form from the date of accepting the publication of the research in the scientific journal and the date of its publication.

13- Researchers in the human specializations may benefit from the comparison points in table No. (1\_a) for scientific specialties when publishing conditions are met in the classifications of magazines that mentioned in the table.

14- If the promotion requirements are not met in Table No. 1, which is (2 values for the teacher, one of which is published) and (3 values for the assistant professor, two are published) and (3 for the teacher, two are published) and one of the researches is for the three ranks, the teacher is required to have one or more reinforcement studies to complete requirements, but in this case, the table still meets the number of points required for promotion, research, or promotional research that affects the due date only.

B- If the scientific output of a number of participants is calculated for the first three participants in the output only, and the points of this scientific output specified in Tables (1) and (2) are calculated with respect to the scientific specialties that the first researcher gets all the points mentioned in them, and the second participant gets (80%) of The points which obtained by the first researcher for the same result and (70%) of the points for the third researcher. While the human specialties, the points of table (1) are calculated as in table (1-b), and the points of table (2) as in scientific specializations.

C- Research obtained from higher diploma and master theses and doctoral thesis completed under the supervision of the promotion student may be approved for the purposes of scientific promotion if they are published or accepted for publication in the name of the graduate student and the student of scientific promotion and only one research is used in the transaction.

D-The book may be approved, patent, or research presented in a periodic scientific conference, in Table 1 and subject to evaluation and the points of these products are calculated by classifying them according to the categories in the table of journals if these products are issued by an institution or a database that has an impact factor, then the treatment of magazines with an impact coefficient and if it is issued in a foreign country outside Iraq, it will be treated like international magazines and if it is issued inside Iraq or in an Arab country, it treats the treatment of Arab and Iraqi magazines, and a book, a patent, may also be used or a forum was discussed in a regular conference on table (2) and not subject to evaluation, provided that these results are not repeated in the two tables.

E-A book, author, or translator with standard international number of books may be approved for the purposes of scientific promotion and treated as a one-time application for research in each promotion. A book may be presented in place of the book presented in the first meal without the evaluation required for the promotion.

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<sup>60</sup>It is the research that the owner of the promotion demands when he does not meet the requirements for the promotion when presenting the first bag of research.

G-- It is permissible to present a patent and treat the search for a one-time application, and another patent may be submitted in place of the patent submitted in the first meal that does not have the required evaluation for the promotion.

H-It is permissible to accept one research presented in a periodic scientific conference for the purposes of scientific promotion if it was published entirely within the conference facts or in the approved scientific journals and its summary is not accepted for the purposes of promotion and it is permissible to present a research presented in a scientific research instead of the research presented in the first meal without the evaluation required for the promotion.

I-The doctoral thesis or its equivalent is a single "authentic" "mutual" research for a member of the faculty who has the thesis to obtain a higher scientific title than the current scientific title in accordance with the provisions of the law and the thesis is not subject to evaluation, and if the thesis is completed in Iraq or in an Arab country, the treatment of the published research In an Arab or Iraqi magazine, but if it is completed in a country outside Iraq, the treatment of the research published in international journals is treated, and in calculating points, the applicant of the thesis is treated as the first researcher.

J-Research published or accepted for publication in scientific journals recorded in databases. Not subject to evaluation. Authentic scopus - TomsonReusstor- science-Nature).

K-The student of the promotion is exempted from the demand for a single search for all grades (teacher, assistant professor, professor) according to the following conditions:

- 1- His first sequence should be in one of the papers submitted for scientific promotion.
- 2-The research should not be drawn from the mastertheses or the doctoral theses supervising it.
- 3- The research should be published in scientific journals registered according to databases. scopus - TomsonReusstor- science-Nature.

L- The common research or product which includes more than one specialty is evaluated simultaneously according to the various research specializations, that is, it is sent to various constituents according to the competence of the joint researchers

M-The result of the same evaluation of the joint scientific product that was previously submitted by one of the participants in this product for the current promotion can be approved, provided that the research is submitted for the required scientific promotion itself or for a higher scientific promotion from it and it is within the same competence of the owner of the current promotion, and it is not permissible to adopt the evaluation result of a scientific product obtained In a completed promotion transaction according to the previous instructions No. (36 of 1992) for a promoted scientific promotion according to the current instructions No. (167 of 2017).

N-Inventions and private and confidential research, excluded from the requirement of scientific publishing, are accepted by order of the competent minister, or whoever authorizes him for the purposes of scientific promotion after being subject to the purposes of scientific evaluation by promotion experts, from more than one secret research for each promotion.

O- The achieved manuscript can rise to the level of scientific research provided that it is "study and investigation" and not only an investigation, and that it meets the requirements of scientific research<sup>61</sup>.

P-All scientific products presented in Tables (1) and (2) are subject to paraphrase, while the scientific results in Table (1) are subject to evaluation only.

Q- Of the total scientific results presented in Table (1), the student must obtain the number and evaluation required in items (1.3) (2.3) (3.3).

R- Forcing breakage (5,.) And more is forced to (1) in the total number of points in tables (1) and (2).  
**The second demand.**

### **The actual due date and legal period for scientific promotions.**

The faculty member deserves to be promoted after the completion of all the requirements specified by the law, and the due date for promotion is as follows: -

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<sup>61</sup>Look at the book, College of Arts, University of Baghdad, No.(10) on 15/1/2015.

A- From the date of submitting the application if the promotion transaction fulfills all the conditions.  
B-Or from the date of completion of the period required for promotion if the scientific production fulfills the conditions.

C- Or from the date of the last scientific product, if it is required to provide promotional research, or from the date of completion of the conditions for scientific promotion, provided that this does not entail any financial consequences.

With regard to faculty members who working in scientific research institutes and centers associated with the university and research units in the Technical Education Authority who are eligible for scientific promotion they treat the same treatment of their peers who teach at universities in terms of the period required for promotion, provided that they have practiced actual teaching for a period of no less than a year with no less than (6 hours per week) on condition that they present additional researchers on what their teaching peers require for each rank<sup>62</sup>.

As for the full-time teaching staff members, he showed the advertisement issued by the Ministry of Higher Education and Scientific Research for the year 2012, the absence of any legal impediment preventing the calculation of a full-time period for the purposes of scientific promotion, the teacher should evaluate after the end of the full-time period according to what he accomplished during that period in order to be counted for the purposes of promotion. This evaluation is considered one of the approved performance evaluations for promotion the period of full-time scholarship for the purposes of scientific promotion is not calculated in the absence of a performance evaluation for the teaching, as well as the inability to apply in the minimum period in this case because of a period of interruption in the performance evaluation<sup>63</sup>.

It may be asked whether a faculty member deserves a promotion when there is a long leave, as in maternity leave or academic leave in the case of full-time, sick or regular leaves (with or without salary) the answer to this question came from long holidays may not be counted for purposes of promotion, according to the letter of the Ministry of Higher Education and Scientific Research for the year 2010 this justification prohibits that scientific promotions require actual presence and true teaching in universities and organizations, not governmental presence<sup>64</sup>. Another question may be asked: Does the period of teaching in private universities and colleges depend for the purposes of promotion?

The Ministry of Higher Education and Scientific Research has responded, according to its 2010 book, that it will approve the period of teaching in private universities and colleges for the purposes of promotion .However, this period does not depend on the period of leave enjoyed by the contractor with private universities and colleges, as he remains excused from his job. The book also indicated that the employees of the other ministry except (employees of the Ministry of Education and the Great Imam College) do not hold scientific titles and therefore do not include scientific promotion. He also indicated that Article (26/2) of the Ministry's Law, which gives the right to members of the teaching staff to be promoted in the event of their designation or being transferred to jobs outside the ministry when the necessary conditions for this are met without the teaching condition<sup>65</sup>. While the full-time faculty to study for a doctorate outside Iraq, the period of study leave between (disengagement and direct) is not counted within the legal period for promotion, unlike part-time students to study for a doctorate partially inside Iraq, the part-time period for them is calculated within the legal period.

The important question in our research topic, does disciplinary sanctions affect scientific promotions and the necessary legal terms for them. In fact, Article (3 / A / First) of the instructions for organizing scientific promotions for the University of Baghdad in 1997 answered this question as it explained that in the event that the student includes any disciplinary sanction during the legal period of promotion, the date of completion of the legal period will be delayed for as long as possible. that the disciplinary sanction will be followed by delaying the bonus or promotion according to the Civil Service Law. In the case of that the

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<sup>62</sup>Look at the text of article (27) of the instructions for scientific promotions in the Ministry of Higher Education and Scientific Research No. (167) for the year 2017.

<sup>63</sup>Look at the book of the Ministry of Higher Education and Scientific Research / Performance Appraisal Section / numbered (T-D / 1372) on 4/3/2012.

<sup>64</sup>Look at the book of the Ministry of Higher Education and Scientific Research / Research and Development Section (B-T / 3132) on 26/4/ 2010.

<sup>65</sup>Look at the book of the Ministry of Higher Education and Scientific Research / Department of Research and Development (No. D-3132) on 26 /4/2010

sanction is issued after presenting the promotion request, this does not affect the progress of the transaction and its promotion.

The project, when drafting the Law for the Discipline of State and Public Sector Employees No. (14) for the year 1991 amended, the average has determined, but exclusively, the material impact of the disciplinary penalty and its impact on the legal status of the public employee by delaying the bonus and promotion, or by extending it further, represented by ending of the employment link, temporarily or permanently. The project, when determining the field in which the effect of the disciplinary sanction extends, it is impossible for the administration to create a field and another effect according to a judgment based on a vacuum in which a new effect is extended that would affect the legal status of the public employee or prejudice it. With regard to scientific promotion or nomination and apply for studies of various levels, as the sanction not accept interpretation or diligence in terms of its period or impact, and to say otherwise is to destroy the principle of legality if the legislator specifies disciplinary sanctions exclusively and as far as the field of scientific promotions and nomination for study does not extend to him the impact of disciplinary sanction, not from near or far the absence of a legal provision to that effect, and the ruling is passed to the employee referred to the administrative investigation, since the original in the human being is innocence. In terms of the legislation in force, the State and Public Sector Discipline Law No. 14 of 1991 amending, and Law of the Ministry of Higher Education and Scientific Research No. 40 of 1988 amending and the instructions for scientific promotions in the Ministry of Higher Education and Scientific Research No. 167 of 2017 did not include that effect definitely, therefore, What is mentioned in Article (3 / a / First) of the instructions for organizing scientific promotions for the University of Baghdad is considered an unjustified jurisprudence, as if the legislator wanted that effect, he would have indicated it explicitly, because the legal basis (is not consistent with the jurisprudence in the source of the text).

For example, the law stated that gratitude entails a job in the field of bonus and upgrading, as well as the promotion or the abolition of disciplinary sanction in an explicit way that is good, and accordingly, disciplinary sanction do not extend to scientific promotions due to the lack of an explicit text in the law.

## II. CONCLUSION

After we finished our tagged research (the effect of disciplinary punishments on scientific promotions - a comparative analytical study), we reach to the most important information about results and suggestions and as follows: -

### **First – Results**

- 1- There are many pictures of the duties that a faculty member abide to if failure to comply with it is a disciplinary violation that deserves accountability and punishment.
- 2- The law set out a set of sanctions mentioned exclusively, as it is not permissible to strive to include sanctions that are not specified in the law.
- 3- The academic promotion is defined as the transfer of the employee from the position he occupies to a higher position in the job ladder that results in an increase in duties and responsibilities, and may be accompanied by an increase in the salary as well.
- 4- The law specifies many requirements for scientific promotions, including legal terms and the presence of scientific activities and productions.
- 5- Disciplinary sanctions do not affect the legal terms for scientific promotions, because the project do not expressly stated.

### **Second – proposals**

- 1- Create a single and stable legal system in universities for scientific promotions and it must be in line with the texts of the instructions for scientific promotions in the Ministry of Higher Education and Scientific Research No. 167 of 2017.
- 2- Expanding the circle of necessary activities for scientific promotions to include all administrative work which performed by a faculty member such as technical and investigative committees that he

accomplishes during the years required for promotion.  
3-Allocating fixed hours for scientific research to be part of the quorum of the teaching to motivate the teacher to do scientific research.

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